

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ENOCH PACKING COMPANY,)	1:98-cv-6359 OWW SMS
)	
Plaintiff,)	ORDER AFTER SCHEDULING
)	CONFERENCE
v.)	
)	Further Scheduling
TEAM ENTERPRISES, INC., a New)	Conference Date: 12/13/06
Mexico corporation dba ONE HOUR)	8:45 Ctrm. 3
MARTINIZING,)	
)	
Defendant.)	
)	
)	

I. Date of Scheduling Conference.

August 16, 2006.

II. Appearances Of Counsel.

Stoel Rives LLP by Lee N. Smith, Esq., appeared on behalf of Plaintiff.

Greben & Associates by Jan A. Greben, Esq., appeared on behalf of Defendant.

III. Summary of Pleadings.

1. This case involves a lawsuit by Enoch, former owner of a shopping center (the "Property"), against its former tenant, Team. Team operated a dry cleaning business on the Property and, through its operations, allegedly contaminated the Property.

1 Enoch alleges that it incurred response costs and diminution in
2 the value in the sale price of the Property as a result of that
3 contamination.

4 2. Enoch's causes of action include:

- 5 a. CERCLA contribution;
- 6 b. Liability under California Hazardous Substances
7 Act;
- 8 c. Breach of contract;
- 9 d. Continuing trespass;
- 10 e. Continuing nuisance;
- 11 f. Permanent nuisance;
- 12 g. Negligence;
- 13 h. Negligence per se;
- 14 I. Waste;
- 15 j. Intentional interference with contractual
16 relations;
- 17 k. Negligent interference with contractual relations;
- 18 l. Declaratory relief;
- 19 m. Mandatory injunction.

20 3. Enoch seeks judgment for:

- 21 a. Declaratory relief that Team is liable for the
22 costs of remedying the release of hazardous substances on the
23 Property.
- 24 b. Declaratory relief that the release of hazardous
25 substances occurred solely due to actions by third parties and
26 that Enoch is not liable for any costs of remedying same;
- 27 c. Award of removal and response costs;
- 28 d. Award of such other damages as may be provided by

1 law according to proof;

2 e. Award of prejudgment interest on removal and
3 response costs incurred;

4 f. Award of attorney's fees, costs, and
5 disbursements; and

6 g. That the Court order Team to remediate the
7 property as required by law.

8 4. Team brought a motion to dismiss the first cause of
9 action for cost recovery under CERCLA Section 7. Enoch
10 voluntarily dismissed without prejudice the first cause of action
11 on March 18, 1999. Team generally denies the allegations
12 pertaining to any claimed liability on its part.

13 5. Team's causes of action in its counterclaim include:

14 a. CERCLA contribution.

15 b. Indemnity and contribution under California
16 Hazardous Substance Act.

17 c. Federal declaratory relief.

18 d. Negligence.

19 e. Negligence per se.

20 f. Private nuisance.

21 g. Nuisance per se.

22 h. Equitable indemnity.

23 i. Contribution.

24 j. State declaratory relief.

25 k. Trespass.

26 6. Team seeks judgment for:

27 a. Award of all response costs and costs incurred in
28 investigation, removal, cleanup and remediation.

1 b. Award of compensatory damages, including lost
2 profits and economic loss, and diminution in value of Team'S
3 business.

4 c. Award of incidental and consequential damages.

5 d. Award of prejudgment interest.

6 e. Award of attorneys' fees and costs.

7 f. Indemnification for any judgment rendered against
8 Team.

9 g. Contribution and/or indemnity from Enoch
10 proportional to percentage of fault attributable to the parties.

11 h. Declaratory relief that Team is entitled to
12 indemnity and/or contribution from Enoch proportional to fault
13 attributable to the parties.

14 7. Enoch generally denies the allegations pertaining to
15 any claimed liability on its part.

16 IV. Orders Re Amendments To Pleadings.

17 1. The Bankruptcy Trustee for Plaintiff Enoch Packing
18 Company reserves the right to redesignate the status and capacity
19 of the Plaintiff. The parties, otherwise, do not anticipate
20 filing any amendments to the pleadings at this time.

21 V. Factual Summary.

22 A. Admitted Facts Which Are Deemed Proven Without Further
23 Proceedings.

24 1. Team and Enoch had a continuous lease agreement at
25 the property from 1972, until the Property was sold in 1999.

26 2. Team operates a dry cleaning facility on the
27 property that may or may not be currently using PCE.

28 3. Team used perchloroethylene (PCE) in its business

1 operations at the Property.

2 4. There is PCE contamination located in the soil
3 surrounding the Property.

4 5. Enoch sold the Property to a third party in 1999.

5 6. It has not been deemed necessary to remove any of
6 the remaining PCE contamination from the soil surrounding the
7 site.

8 B. Contested Facts.

9 1. The liability of Team and/or Enoch.

10 2. Whether or not the original or subsequent sale of
11 the property by Enoch was affected by the contamination.

12 3. Whether Team and/or Enoch caused or contributed to
13 the contamination.

14 4. Whether Team breached its lease by causing
15 contamination and/or failing to add Enoch to its insurance as an
16 additional insured as required thereunder.

17 VI. Legal Issues.

18 A. Uncontested.

19 1. Jurisdiction exists under 28 U.S.C. § 1331.

20 2. Venue is proper under 28 U.S.C. § 1391(b).

21 3. The parties agree that for supplemental claims,
22 the substantive law of the State of California provides the rule
23 of decision.

24 B. Contested.

25 1. All legal issues, including the extent of the
26 claims associated with contamination, allocation and
27 responsibility for liability, and the amount of damages, if any,
28 are all in dispute.

VII. Consent to Magistrate Judge Jurisdiction.

1. The parties have not consented to transfer the case to the Magistrate Judge for all purposes, including trial.

VIII. Corporate Identification Statement.

1. Any nongovernmental corporate party to any action in this court shall file a statement identifying all its parent corporations and listing any entity that owns 10% or more of the party's equity securities. A party shall file the statement with its initial pleading filed in this court and shall supplement the statement within a reasonable time of any change in the information.

IX. Discovery Plan and Cut-Off Date.

1. The parties are going to jointly endeavor, through mediation or alternate dispute resolution, to resolve this case. Therefore, a further scheduling conference is set for December 13, 2006, at 8:45 a.m. in Courtroom 3.

2. If the parties believe it will assist them, the Court will provide the auspices of the Magistrate Judge to assist in the settlement process. If the parties wish the assistance of the Magistrate Judge, they are to notify the Courtroom Deputy Clerk, who will arrange a date convenient with Magistrate Judge Snyder's schedule.

IT IS SO ORDERED.

Dated: August 17, 2006
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/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE